IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No.5122 of 2005

Date of Decision: October 3, 2007

Gulshanbir Kaur .....Petitioner

Versus

State of Punjab and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.TS Dhindsa, Advocate for the petitioner.

Mr.Piyush Kant Jain, Additional Advocate General Punjab for respondent No.1.

Mr.Deepak Sibal, Advocate for respondents No.2 and 3.

S. D. ANAND, J.

1. The challenge herein is to the impugned order dated 17.5.2004 (Annexure P13) terminating the services of the petitioner as Registrar, Punjab Nurses Registration Council (hereinafter referred to as "the Council"). The plea raised by the petitioner is that the impugned order, dated 17.5.2004 and also the order dated 16.7.2004, whereby a statutory appeal preferred by her had been declined, deserve invalidation for being perverse and in violation of the statutory provisions contained in the Punjab Registration Act, 1932 (hereinafter referred to as "the Act") and the rules framed thereunder. The further plea raised, in the context, is that the impugned order is without jurisdiction and is also violative of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to

as "1970 Rules).

2. The facts, essential for adjudication of the controversy, may be indicated in the first instance. In pursuance of a regular selection process, the petitioner came to be appointed as Registrar of the Council vide appointment order dated 3.11.2000. In pursuance of that appointment, she joined duty on 16.11.2000. Her services were, at an earlier point of time, terminated vide order dated 4.5.2001 (Annexure P1). The petitioner applied for the quashing of Annexure P1 by filing Civil Writ Petition No.7245 of 2001. The essential challenge to the validity of the order, Annexure P1, was based upon an averment that the Director (Health and Welfare), Punjab, was not competent to impose any punishment on the Registrar of the Council. That Writ Petition came up for motion hearing on 18.5.2001. While issuing the notice of motion, a Division Bench of this Court stayed the operation of the impugned order. In the light thereof, the petitioner was allowed to re-join the post aforementioned. Thereafter, the learned counsel representing the Council made a statement before this Court on 29.4.2002 that the impugned order would be withdrawn and fresh orders in the context would be passed "i) in the light of fresh proceedings conducted by the Council". In view thereof, that petition was dismissed as infructuous on 29.4.2002. Thereafter, orders dated 29.4.2002 (Annexure P4) were communicated to the petitioner, thereby again placing her under suspension. It was indicated, in the course of Annexure P4, that the decision to suspend the petitioner had been ratified by the Council at its meeting on 24.2.2002. The petitioner was again constrained to file Civil Writ Petition No.13304 of 2002 on an averment that a void order, passed by the President, could not have been ratified by the Council. During the pendency of that writ petition, the

petitioner was re-instated. On that account, Civil Writ Petition No.13304 of 2002 was disposed of as infructuous, vide order dated 16.1.2004.

3. In pursuance of memos No.PNRC/02/1605 dated 5.6.2002 and PNRC/02/1606 dated 5.6.2002, two charge sheets were served upon the petitioner under Rule 8 of the 1970 Rules. The protestations made by the petitioner with regard to certain procedural objections including the non-supply of the preliminary enquiry report notwithstanding, the enquiry was concluded ex parte and report dated 21.11.2003 was submitted. The enquiry proceedings were ordered ex parte inspite of the intimation by the petitioner that she was not in a position to attend the proceedings on account of her ill-health. An order of termination, on the basis of the acceptance of enquiry report findings, followed.

4. The plea raised by the petitioner is that the impugned order dated 17.5.2004 terminating her services is non-speaking in character. Apart therefrom, the essential plea is that the impugned termination of her services is invalid as it had not been ordered by the Council. The plea, in the context, is that even the appeal dated 19.5.2004 (Annexure P14) filed by her had also not been put up before the Council. The petitioner filed additional grounds of appeal (Annexure P16) before respondent No.1 on 4.6.2004. Respondent No.1 declined her statutory appeal (as initially filed and also the additional grounds) without dealing with the points raised therein. The following are the counts on the basis whereof the petitioner applied for the invalidation of the impugned orders dated 17.5.2004 and also the orders dated 16.7.2004/10.8.2004 rejecting the statutory appeal:

> "a. Because the action is wholly without jurisdiction. In this

respect it is submitted that under the relevant provisions of the 1932 Act as also the 1997 Regulations, the appointing authority to the post of Registrar is the Council which is a body corporate having perpetual succession. Regulation 11 of the 1997 regulations clearly stipulate that the President (Director, Health an Family Welfare, Punjab) would be the competent authority to take disciplinary action against all members of the office establishment of the Council below the rank of Registrar. Clause II of Regulation 11 further crystallizes the matter wherein it is provided that in so far as disciplinary action against the Registrar is concerned, the President shall report to the Council and it would the Council which is competent to take any decision, disciplinary in nature, against the Registrar. In the present case, the issuance of the charge sheets, consideration of replies thereto and appointment of the Enquiry Officer have been done by respondent No.2 himself. He had no authority to do so. As such, the impugned orders which are the result of culmination of disciplinary proceedings initiated by respondent No.2 cannot be sustained being wholly without authority of law;

b. Because the action is contrary to the settled proposition of law that once the very initiation of proceedings is without the sanction of law, the consequent orders also suffer from the same vice and are illegal. Applying this principle since the very initiation of disciplinary proceedings against the petitioner in terms of issuance of the two charge sheets is without authority of law, as such, all the consequential proceedings including impugned orders are bad in law;

c. Because the action is illegal. A bare reading of the decision on Agenda Item No.8 in the meeting of the Council held on 17.5.2004 would demonstrate that the Council has proceeded to ratify on 17.5.2004 itself the action of the President of the Council in issuing the charge sheets dated 5.6.2002, consideration of the replies dated 25.11.2002 submitted by the

petitioner to the charge sheets as also appointment of Enquiry Officer vide order dated 11.10.2002. It is respectfully submitted that the action of the President, respondent No.2, in issuing the charge sheets, considering the reply and appointing the Enquiry Officer was void ab initio, as he had no power to do so. On the contrary, there is a specific bar under the 1997 Regulations for the President to initiate any disciplinary action against the Registrar of the Council. As such, such void orders/proceedings could not be ratified at a later stage by the Council. The action, as such, cannot be sustained;

d. Because even otherwise the action is illegal. Admittedly, Agenda Item No.8 relating the Council's meeting fixed for 17.5.2004 which was duly circulated amongst the members related to reinstatement/appointment of the petitioner to the post of Registrar and not regarding termination of her services. Assuming for the sake of arguments that the Council still had the power to consider the issue of termination of the services of the petitioner, then it was incumbent for the Council to have confined its consideration qua the charges in relation to which enquiry proceedings had been initiated and finding of the Enquiry Officer having come. A reading of the decision in relation to Agenda Item No.8 would show that eight other issues regarding complaints from employees, other complaints in relation to which no enquiry has been held till date etc. have come up for consideration and have weighed with the Council to come to a conclusion that the services of the petitioner be terminated. This is clearly not permissible in law inasmuch in relation to all the other matters the petitioner never got a chance to defend herself and to portray her side of the matter. The action as such is illegal and cannot be sustained;

e. Because the action smacks of arbitrariness and is violative of Art.14 of the constitution of India. The petitioner was served with a communication dated 17.12.2003 calling upon her to submit objections, if any, to the enquiry report. The petitioner

accordingly submitted detailed objections dated 16.1.2004. These objections were in the nature of questioning the very authority of the President of the Council in issuing the same as also the fact that relevant documents in spite of repeated requests had not been shown to her, her reply to the charge sheet having not been considered and finally an ex-parte enquiry being ordered in spite of the fact that the petitioner had always associated with the enquiry proceedings. These objections have neither been dealt with by the Council which admittedly is the Disciplinary Authority of the petitioner in its meeting dated 17.5.2004 nor does the order dated 17.5.2004 disclose any reasoning to reflect an application of mind on the objections filed by the petitioner. The action as such is perverse and cannot be sustained;

f. Because the action is contrary and in violation of the 1970 Rules. It was incumbent for the Enquiry Officers to have notified the petitioner of the decision to hold an ex parte enquiry. This was not done. Even under rule 19(2) of the 1970 Rules it is incumbent upon the appellate authority to consider whether the findings of the punishing authority are warranted by the evidence on the record. In the present case, the appellate authority itself has committed the same error as has been committed by disciplinary authority inasmuch as complaints etc. which did not form part of the enquiry proceedings were taken into consideration and the appeal rejected. The action as such stand vitiated;

g. Because the appellate authority while deciding the appeal called for the comments from the President of the Council. The comments which were forthcoming from the President have been re-produced in the impugned order dated 16.7/10.8.2004 wherein the President has reported that the order terminating the services of the petitioner is a detailed and speaking order and has further averred that the enquiry report was sent to the petitioner for her objections and that the Council has

considered the objections as also the replies submitted by the petitioner to the charge sheets. It is respectfully submitted that factually the position is otherwise. The decision on Agenda Item No.8 in the meeting of the Council dated 17.5.2004 does not even touch upon the objections filed by the petitioner leave alone the reply filed to the charge sheets. That apart, the order terminating the services of the petitioner dated 17.5.2004 is a cryptic two line order which the President in his comments is describing as a detailed and speaking order. As such, the action of the appellate authority in calling for the comments from the President of the Council and in relying upon such comments when the same are factually incorrect and is vitiated;

h. Because the action is violative of the principles of natural justice. At every stage the petitioner has been prejudiced inasmuch as her rights to defend herself have been denied to her. In this regard, in the first instance, she was denied the right to inspect the relevant documents to set up her defence, denied the assistance of a practicing lawyer at the stage of enquiry, the enquiry officer proceeded ex parte without any basis and without giving any opportunity or notice to the petitioner and thereafter the disciplinary authority proceeded to impose a major penalty without considering her objections to the enquiry report much less issued a show cause notice as regards termination of services of the petitioner were concerned. The action as such, cannot be sustained;

i) Because the action actuated by malice. It is respectfully submitted that malafides are borne out not out of one solitary order or happening but have to be collated from the surrounding circumstances leading to the passing of the impugned orders. In the facts of the present case, the entire sequence and change of events would lead to an irresistible conclusion that respondent No.2 has on a number of earlier occasion exercised powers in his personal capacity and passed orders to terminate the services of the petitioner as also to

> suspend. On all the three occasions writ petitions were filed and the primary ground of challenge was regarding the jurisdiction of the President of the Council to take any disciplinary against the Registrar i.e. the petitioner. In an intent to again remove the petitioner and to circumvent the orders of this Hon'ble Court passed in CWP No.7245 of 2001 the present orders have been passed which suffers from the patent illegality of lack of authority and jurisdiction. The action is, thus, malafide and cannot be sustained in law."

5. The petition was resisted by all the respondents. Respondent No.1 – State of Punjab averred the correctness of the rejection of statutory appeal filed by the petitioner by raising an averment that the impugned rejection came about after a personal hearing had been granted to the petitioner on 12.7.2004 and 14.7.2004.

6. Respondents No.2 and 3 also re-iterated the validity of the impugned orders. It was pleaded that the enquiry proceedings were in order inasmuch as it was the petitioner who opted to stay away from the enquiry on a false pretext. The further averment is that it was the Council which had taken a unanimous decision to terminate the services of the petitioner and further it was the Council only which rejected the appeal filed by the petitioner by passing a well-reasoned and speaking order.

7. I have heard Mr.TS Dhindsa, learned counsel for the petitioner, Mr.Piyush Kant Jain, learned Additional Advocate General, Punjab for respondent No.1 and Mr.Deepak Sibal, learned counsel for respondents No.2 and 3 and have gone through the file.

8. Mr.Dhindsa, learned counsel for the petitioner, argued at the very outset that the Act does not at all authorise the President to take a decision in the matter of any disciplinary action against the Registrar of the

Council. It was argued that the serving of a charge sheet by the President was invalid in the absence of a decision prior in point of time by the Council to take disciplinary action against the petitioner. It was also argued that a decision which was initially invalid, could not have been ratified by the Council.

9. Mr.Deepak Sibal, learned counsel appearing on behalf of respondents No.2 and 3, resisted the plea by pointing out that it is the ultimate decision which has to be compulsively taken by the Council and the pre-enquiry charge sheet acts do not have to be necessarily based upon a decision taken by the Council. The learned counsel argued that if it was held that it was the Council only which had to take a decision at every step of the disciplinary proceedings, it would lead to avoidably complicated results. The line of argument was to the effect that the President was competent to obtain the response of the petitioner to the two charge sheets which (the charge sheet and also the response furnished by the petitioner) were to be put up before the Council for decision.

10. For adjudicating upon the controversy aforementioned, which otherwise goes to the root of the impugned order, it would be appropriate to notice the relevant provisions hereunder:

> "**Regulation 11 of the Punjab Nurses Registration Council (Employees Conditions of Services) Regulations, 1997.**
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> (i). **Discipline, Penalty and Appeals** – The President shall be competent to take such disciplinary action, as he may deem necessary including withholding increments, suspension, removal or dismissal against all members of offices establishment of the Council below the rank of Registrar. An

appeal against such decision of the President lies with the Council.

(ii) The President shall report to the council all matters for disciplinary action against the Registrar for their decision. Appeal shall lie with the government against the decision of the council."

11. As would be evident from a perusal of the above quoted regulation, the President is competent to take disciplinary action against all members of the office establishment of the Council, with the exception of the Registrar. In the case of the Registrar, the President has to report to the council all matters for disciplinary action against the Registrar for the decision.

12. The question which would fall for determination at the moment is whether a decision to initiate disciplinary proceedings must precede the issuance of a charge sheet? What, then, is the stage when it can be announced that a decision has been taken to initiate disciplinary proceedings. The answer to these posers is to be found in **Delhi Development Authority Versus H.C.Khurana**, 1993(2) SLR 509, in the course whereof the Apex Court observed as under:

> "The question now, is: what is the stage, when it can be said, that 'a decision has been taken to initiate disciplinary proceedings'? We have no doubt that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge sheet, since issue of the chargesheet is a consequence of the decision to initiate disciplinary proceedings. Framing the chargesheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The chargesheet is framed

> on the basis of the allegations made against the government servant; the chargesheet is then served on him to enable him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise, any enquiry is held into the charges; if the charges are not proved, the proceedings are closed and the government servant exonerated; but if the charges are proved, the penalty follows. Thus, the service of the chargesheet on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. The delay, if any, in service of the chargesheet to the Government servant, after it has been framed and despatched, does not have the effect of delaying initiation of the disciplinary proceedings, inasmuch as information to the government servant of the charges framed against him, by service of the chargesheet, is not a part of the decision making process of the authorities for initiating the disciplinary proceedings.
>
> The context in which the word 'issued' has been used, merely means that the decision to initiate disciplinary proceedings is taken and translated into action by despatch of the chargesheet leaving no doubt that the decision had been taken. The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision. Obviously, the contrary view cannot be taken."
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> (Underlining for emphasis)

13. A similar view was taken by a Division Bench of this Court in **Baldev Singh Versus Secretary to Govt. Punjab Rehabilitation Deptt. and others**, Recent Services Judgments (1950-1988) Vol.5, 491.

14. It is, thus, apparent that taking of a decision to initiate disciplinary proceedings must precede the issuance of a charge sheet.

15. The reliance placed by the learned counsel for the respondents

upon **Bajinder Kumar Chopra Versus The Food Corporation of India,** 1998(3) SLR 268 is mis-conceived. In that case, it was held by the Division Bench that :

> "(iv) The initiation of proceedings can be invalidated only if the rules specifically empower a particular authority to initiate the action and some other authority not empowered to do so institutes the disciplinary action."

16. In the context of the above quoted judicial pronouncements in **Bajinder Kumar Chopra's** case (supra), it may be noticed that Rule 11 categorically provides that the President is only competent to report the relevant matter to the Council and it is the latter only which is competent to take a decision. Even otherwise, it may be noticed that the Council is a much larger body consisting of as many as 14-15 personnel of different hierarchal levels. The President is not indicated to be a part of the Council. That being so, there is no escape from the finding that it is the Council only which is competent to initiate any disciplinary proceedings against the Registrar.

17. Faced with that predicament, the learned counsel for the respondents argued that all the decisions taken by the President in the context of disciplinary action against the petitioner had been ratified by the Council and, thus, the validity of those actions cannot be challenged.

18. The plea raised is thoroughly mis-conceived. If the impugned action had been taken by an Authority not competent in that behalf, any amount of ratification thereof by the Competent Authority would not validate it. If any judicial pronouncement in support of this view is required, reference may be made with advantage to **Haryana Seeds**

Development Corporation Ltd. Versus Shri J.K.Aggarwal, 1989(1) SLR 381.

19. In the light of foregoing discussion, it is apparent that the impugned orders are not sustainable inasmuch as those had not been initially passed by the Council which was the only Competent Authority (in terms of Regulation 11 of the Punjab Nurses Registration Council (Employees Conditions of Services) Regulations, 1997) to take disciplinary action against the Registrar of the Council. The ratification thereof by the Council is meaningless in the context of legal enforceability.

20. The petition shall stand allowed. The impugned orders, Annexures P13 and P17, are quashed. The petitioner is ordered to be re-instated to the post of Registrar of the Council. The petitioner shall also be entitled to all the consequential benefits thereof.

(S. D. ANAND)
JUDGE

October 3, 2007
SRM

Note: Whether referred to reporter or not? Yes/No